

**MINUTES
LESC MEETING
MONDAY, JANUARY 19, 2004**

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on January 19, 2004, at 9:02 a.m., State Capitol, Room 317, Santa Fe, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Dianne Miller Hamilton, Pauline J. Ponce, Mimi Stewart, Thomas E. Swisstack, and W.C. "Dub" Williams; Senators Cynthia Nava, Vice Chair, Gay G. Kernan, and Mary Kay Papen.

The following LESC advisory members were present:

Representatives Kandy Cordova, Ron Godbey, Roberto J. "Bobby" Gonzales, John A. Heaton, Sheryl Williams Stapleton, J. Paul Taylor, and Richard D. Vigil; and Senators Mary Jane M. Garcia, John Pinto, and Leonard Tsosie.

Upon a motion by Representative Stewart, seconded by Representative Swisstack, the committee unanimously approved the agenda as presented.

BATTLE FOR BATAAN CURRICULUM RESOURCE

Representative Miera recognized Dr. Carmen Gonzales, Vice Provost, Distance Education, New Mexico State University (NMSU), and Ms. Susie Bussmann, Director, Regional Education Technology Assistance (RETA), for a presentation on a social studies curriculum resource, *Battle for Bataan*. Dr. Gonzales noted that the project had originated during the 2002 legislative session in Senate Joint Memorial 82, *Teach History of Bataan Death March*. She said that, while the joint memorial did not pass, the Public Education Department (PED) nonetheless decided to support the development of a curriculum resource on the history of the Battle for Bataan for use by New Mexico school children. Dr. Gonzales gave two reasons why the curriculum was necessary: (1) school children lacked knowledge of this aspect of the history of New Mexico, and (2) the aging and death of the Battle for Bataan survivors threatened an irretrievable loss of the personal accounts of the history if not recorded for posterity's sake.

Dr. Gonzales indicated that NMSU, in collaboration with RETA and PED, developed both a compact disc (CD) and a website that provides the curriculum resource. She explained that the project took roughly 18 months to complete with a budget of approximately \$65,000, of which PED and RETA contributed approximately \$25,000 each, with the balance coming from NMSU. She noted that the resource is available for free to any educator in the state who requests a copy of the CD or who has access to the Internet. Dr. Gonzales stated that a copy of the CD was distributed to each committee member.

Ms. Bussmann outlined the content of the CD, which details the experience of military personnel of the United States and the Philippines during their defense of the Bataan Peninsula at the beginning of World War II, the forced “death march” after surrender to the Japanese military, and their subsequent internment as prisoners of war. In closing, Ms. Bussmann noted that a slide maker that allows teachers or students to create an individualized presentation from the *Battle for Bataan* materials is available via the website.

There being no questions, Representative Miera thanked the presenters and stated that this history of the Battle of Bataan will be an important addition to support social studies curriculum in New Mexico schools.

FINAL RECOMMENDATIONS OF THE PUBLIC SCHOOL CAPITAL OUTLAY TASK FORCE INCLUDING CHARTER SCHOOLS

Representative Rick Miera, who served as the Public School Capital Outlay Task Force (PSCOTF) Co-chair, introduced his task force Co-chair, Mr. Robert Desiderio, Dean and Professor Emeritus, University of New Mexico School of Law; Ms. Paula Tackett, Legislative Council Service (LCS) Director; and Ms. Janet Peacock, LCS researcher, to provide the committee with PSCOTF recommendations for the 2004 Legislature and an update on the implementation of the new standards-based public school capital outlay funding process. Representative Miera stated that because the task force had just completed its work less than two days previously, final drafts of bills would not be available until after the session begins. He explained that task force recommendations will be included in two separate bills: (1) a general public school capital outlay bill, and (2) a bill dealing specifically with charter school issues and facilities.

Chairman Miera recognized Dean Desiderio to provide the LESC with task force recommendations on statutory amendments relative to addressing past inequities and implementing the new standards-based process for all schools. Dean Desiderio thanked and complimented the task force members for all of their hard work during the 2003 interim and during the previous two years of the existence of the task force. He also recognized staff from the LESC, the Legislative Finance Committee (LFC), LCS, PED, and the Public School Facilities Authority (PSFA) for their contributions and support in accomplishing the work of the task force.

Dean Desiderio said that, even though the PSCOTF recommendations continue to move the state forward in addressing past inadequacies in public school capital outlay funding and implementing the new standards-based process for all schools, the task force does not consider its job to be finished at this time. He also explained that, while the task force did make some recommendations to strengthen funding for public school capital outlay, it was not able to

determine whether the proposed funding changes are sufficient to bring all schools to adequacy within a reasonable time-period. Dean Desiderio said that the task force had initially been working on a conceptual framework that looked at bringing all schools to adequacy within ten years while also continuing to reduce the facility condition index for building renewal and replacement. He said that the task force has not yet received the data necessary to determine if this approach will accomplish these goals; therefore, one of its first recommendations is that the Legislature allow the task force to continue for one additional year. He said that he believes the task force is close to that determination, but that the data are so complicated and the dollar amounts so great that members believe they need additional time to make those determinations—without, however, slowing up implementation of the standards-based process. He said that an additional year will give the PSCOTF time to test and assess the framework and give the PSCOC a year to pilot the new standards-based process.

Addressing funding recommendations, Dean Desiderio explained that the task force believes that amounts of funding and determination of funding sources will likely be the most controversial part of the PSCOTF recommendations. He said that the task force has estimated that the overall amount of funding necessary to bring all school facilities to adequacy over the next ten years will be approximately \$2.5 billion. He reminded committee members that the statute enacted by the Legislature in 2003 requires that, on average, the state is responsible to provide 50 percent of those funds with local districts responsible for the remaining 50 percent, which puts the state's obligation at \$1.25 billion over the next ten years. With that in mind, he said the PSCOTF recommends the following:

- Guarantee an annual funding level for the ongoing public school capital outlay process of \$125.0 million per year. He said that this figure represents the task force's current best estimate of the amount needed to meet statewide adequacy standards, including projected enrollment growth while taking into account the amount that can be realistically managed and overseen by the PSFA.
- Continue the use of supplemental severance tax bonds as the primary source of funding. He added, however, that, because this source is fairly volatile from year to year and is not expected to provide as much as \$125.0 million each year, the PSCOTF is recommending that senior severance tax bonds be used to guarantee the annual funding amount. He explained that the task force is recommending that the need to use senior severance tax bonds would be determined based on a three-year "rolling average" of past and current levels of supplemental severance tax bonds.
- Increase the amount of severance tax revenues that can be used to support supplemental severance tax bonds from 37.5 percent to 45 percent. Dean Desiderio explained that this increase will provide some additional capacity, especially during years in which revenues are rising because of high oil and natural gas prices. He added that the PSCOTF recognizes that this recommendation will reduce, to some extent, the amount of money transferred into the Severance Tax Permanent Fund on an annual basis but that this fact must be weighed against the scarce resources available to the state for public schools and other state and local infrastructure needs.
- Continue to fund the Deficiencies Correction Program, which has identified and begun to address \$324.5 million in health and safety corrections needed at schools throughout the state. The dean explained that, according to data presented to the task force,

approximately \$106.0 million is needed to complete these projects. He said the task force recommends providing these funds by authorizing supplemental severance tax bonds to be paid from FY 04 revenues that would otherwise be transferred to the Severance Tax Permanent Fund and by making a one-time appropriation from the General Fund Operating Reserve.

Regarding PSCOC grant awards and process, Dean Desiderio said that task force members had reached consensus on the following recommendations:

- Continue to require, for the allocation cycle beginning September 1, 2003, that grant awards will be based on the statewide adequacy standards and that all districts will be eligible to apply. He explained that under the former “critical capital outlay” program, grant awards were often made in phases and noted that a number of projects partially funded by the PSCOC in the last cycle will require additional funds to complete. He said that the task force endorses the need for these projects to receive continuation funding so that they can be completed in a timely manner. Therefore, he said, the task force recommends that, for the next three-year period, the order of priority for funding must first reflect those projects that were partially funded before the allocation cycle beginning September 1, 2003.
- Authorize the PSCOC to make grants outside of the normal process in the case of emergencies that threaten the health and safety of students or school personnel.
- Authorize up to \$3.0 million from the Public School Capital Outlay Fund to be appropriated annually to support lease payments for charter schools for FY 05 through FY 09. Dean Desiderio asked Ms. Peacock to elaborate on this recommendation. She said that the grant amount to an individual school would be the lesser of the actual lease payment or \$300 per member (based on prior-year membership). She also said that the task force intends these funds to be used to match funds provided as part of the federal *No Child Left Behind Act of 2001*. She added that the task force also recommends that all charter schools be housed in public facilities by school year 2009-2010. She stated that she would address other task force charter school recommendations later in the presentation.

Regarding the issue of so-called “recalcitrant” districts, Dean Desiderio provided the LESC with the following PSCOTF recommendation:

- Enact legislation to allow the PSCOC to bring a court action against a school district that can be determined to be either unwilling or unable to bring its facilities to a minimum standard as required by the state constitution within a reasonable time frame. He explained that, with enactment of this type of legislation, the PSCOC could request a district court to enter a judgment against the school district for its share of funding to bring schools to adequacy standards. This amount would then constitute a debt of the district, and if the district’s debt could not be satisfied with its available funds, the court could order the imposition of a district-wide property tax that would be sufficient to satisfy the debt.

Regarding issues dealing with maintenance of facilities, Dean Desiderio presented the following recommendations:

- Amend the *Public School Capital Improvements Act* (also called the “two-mill levy” or “SB 9”), to allow SB 9 funds to be used for technical training and certification for school district maintenance and facilities management personnel.
- Increase the state guarantee amount for SB 9 from \$50 per mill per unit to \$60 per mill per unit beginning in FY 05 and, thereafter, index both the guarantee amount and the minimum state contribution of \$5 per mill per unit to the rate of inflation. Dean Desiderio said that PED has not yet projected the cost of this recommendation, but it is expected to provide approximately \$10.0 million per year from the Public School Capital Outlay Fund for maintenance in FY 05 and to protect the level of state funding over time from erosion because of normal growth in assessed valuations.

Regarding other issues, Dean Desiderio said that the task force recommends:

- changing the membership of the PSCOC to reflect the new PED structure and to add the president of the New Mexico Superintendents Association as a tenth member;
- amending statute to include language to encourage the use of mediation at the district level to resolve disputes relating to facilities and placement within the five-year master plan; and
- applying a three-year carry-forward period to the direct legislative appropriation offset that applies to education technology funding.

Chairman Miera recognized Ms. Peacock to discuss PSCOTF recommendations related to charter schools, which, he reiterated, would be included in a separate bill. She explained that the recommended bill for 2004 merges the draft bill developed by the task force for the 2003 session (which was never introduced) and the LESC-endorsed charter school bill that was introduced but did not pass during the 2003 session. She said that the PSCOTF charter school bill includes the following recommended amendments to the *1999 Charter Schools Act*:

- provide for a mediation process to resolve disputes between established charter schools and their respective school districts as well as between applicant charter schools and the districts to which they are applying;
- for charter schools approved or renewed after July 1, 2004, prohibit governing board members of one charter school from serving as governing board members of another charter school;
- allow the Secretary of Public Education to authorize a charter school to maintain separate facilities within the same district but, for purposes of calculating State Equalization Guarantee program units, to require that separate facilities be treated as a single school;

- require, after January 1, 2009, all charter schools applying for renewal of their respective charters to be housed in public buildings, with exceptions provided under certain conditions;
- require that, after July 1, 2004, a new charter school cannot begin operating until PSFA certifies that the school's facility meets health and safety codes related to educational occupancy;
- require all charter school facilities to meet statewide adequacy standards within the same time frame in which other public schools are being brought to standards;
- clarify that local school districts are responsible for providing the state match required for projects to bring facilities of charter schools to adequacy standards;
- make charter school facilities eligible for state and local capital outlay funds and require that those facilities be included in the school district's five-year facilities plan;
- require a school district to provide a charter school with available facilities, either at no cost or at a cost no greater than the cost to the school district, unless those facilities are being used for other educational purposes;
- make a number of changes to deadlines, dates, and requirements associated with obtaining a charter;
- allow a public postsecondary educational institution to apply to begin a start-up charter school;
- allow an initial charter to be approved for a term of six years, rather than five, provided that the first year is used for planning; and
- clarify the role of the Secretary of Public Education in hearing an appeal of a decision of a local board to deny, not renew, or revoke a charter or to impose unacceptable requirements as a condition of approval or renewal of a charter.

Chairman Miera recognized Ms. Tackett to provide the committee with an update on development and implementation of the PSCOC standards-based public school capital outlay grant process.

Ms. Tackett explained that the PSCOC and PSFA are in the process of converting the Building Owners and Managers Association (BOMA) Facilities Condition Index established by the 3D/International consultants to the New Mexico Condition Index (NMCI). She said that the original index was based almost completely on school building replacement and renewal costs and that the new index now includes measurement against adequacy standards and considerations for individual school and district growth. She reported that staff members are currently working to develop written regulations and procedures that will pull together the entire PSCOC standards-based capital outlay grant process.

Ms. Tackett said that, for this first pilot year, the process includes four phases: (1) pre-application; (2) application; (3) post-application review and analysis process; and (4) grants.

1. **Pre-application phase:** Ms. Tackett explained that the first step in the pre-application phase is a PSCOC review of the final NMCI for the year of the grants, which will include affirming validity of the methodology for determining the NMCI. She said that PSCOC expects the final report from 3D/I in mid February, at which time PSFA staff will begin working with the districts to determine where they are in their master planning process in relation to the currently available data. She emphasized that the entire process is premised on a continuous review and update of the data in conjunction with information provided by districts. Ms. Tackett said that PSFA staff, including on-site, regionally based staff, will also provide assistance to districts regarding the adequacy standards, state and local match determination, master plans, maintenance plans, and cost-benefit analyses, specifically in relation to determinations regarding repair or replacement of facilities and phasing of projects. She said that the PSCOC has adopted both model master planning and maintenance plan guides and noted that the council has been very pleased with the work PSFA staff did with consultants and volunteer advisory groups of school district facilities professionals.

Ms. Tackett said that another step in the pre-application phase will involve calculation, in conjunction with the State Board of Finance, of the annual amount of funding available for PSCOC grants. Also a part of the pre-application phase will be the PSCOC Awards Subcommittee review of prior awards, contingencies, and phasing requirements as they pertain to current rankings and estimated funding.

2. **Application Phase:** Ms. Tackett said that, throughout this phase of the process, PSFA staff will be available to assist districts with preparing applications and that school personnel will be trained on the use of the NMCI database so that they can access background data on each of their individual schools. She explained PSCOC plans to limit the potential application pool to NMCI-based district projects making up 150 percent of projected available state funding. Ms. Tackett added that once the council agrees on the potential applicant pool, districts will be notified. She explained, however, that the application process also includes an appeals process. If, for example, a district believes that it has a project that should be included among the “150 percent pool,” district personnel can appeal the project’s ranking based on the NMCI data and related ranking. She said that districts will submit appeals along with applications. She noted that the target date for the mailing out of applications is the end of March 2004.
3. **Post-application review and analysis phase:** Ms. Tackett said that the first step in the review and analysis process will be for PSFA to prepare a list of all applications received, including each project’s NMCI, and a list of all appeals. PSCOC will then hold appeals hearings for districts to make presentations regarding their respective positions on the NMCI and also to hear PSFA recommendations. Once PSCOC makes a final determination of the applicant pool, PSFA will conduct field reviews of the proposed projects working with districts to delineate and focus on the adequacy standards. She said that, at this point, districts will have the opportunity to submit revised applications and make presentations to the council as was the procedure for the former “critical capital outlay” process. Ms. Tackett also said that, at this point, PSCOC will work with the State Board of Finance to finalize the level of funding available for PSCOC grant awards.

4. **Grants phase:** At this point, Ms. Tackett explained, staff will make a final review of the applications and prepare them for PSCOC Awards Subcommittee consideration including scope, project, estimate, phasing, and utilization options; the NMCI ranking; and funding offsets. Taking all of this information into consideration, the Awards Subcommittee will then make its recommendations to the full council. As the council makes final determinations, among the considerations that the full council will take into account are grants to fund projects to 100 percent of adequacy, district matching fund contingencies and/or a lack of matching funding confirmation on the part of districts, current and future year phasing commitments, direct or indirect project management by PSFA, and payment options such as direct payments, district payments, and reimbursement options.

Ms. Tackett said that the council is still working to finalize the role of PSFA staff in pre-planning and design review of projects, maintaining a cash flow from General Fund dollars in the future, and a methodology to determine the NMCI annually.

Committee Discussion:

Committee members expressed support for continuation of the PSCOTF and mentioned the importance of consistent evaluation during the pilot year of implementation of the standards-based process.

In response to a committee member's question regarding PSCOTF membership, Ms. Peacock said that the task force consists of 21 members, six of whom are legislators, and including the chairs of the House Education Committee and Senate Education Committee, the chairs of the House Appropriations and Finance Committee and the Senate Finance Committee, and two minority members. She said that additional members include three representatives of districts receiving Impact Aid, the secretaries of the Public Education Department (PED) and the Department of Finance and Administration (DFA), the state investment officer, the deans of the University of New Mexico School of Law and the New Mexico State University School of Engineering, and other members appointed by the House, Senate, and Governor who have expertise in education and finance. In response to an additional committee member's question, Ms. Peacock said that the membership included in the proposed legislation would be essentially the same as the previous membership.

Noting a handout provided by Dean Desiderio that includes projects partially funded and begun under the old "critical capital outlay" program a committee member expressed concerns that those continuation projects will receive priority consideration for funding to complete them and that they will be completed in a timely manner. In response to a committee member's question, Dean Desiderio reiterated that the PSCOTF recommends language that, for the next three-year period, the order of priority for funding must first reflect projects that were partially funded before implementation of the standards-based process as of September 1, 2003. The committee member also expressed concerns that the term "adequacy" continue to be used to describe defined adequacy standards and not minimum standards.

In response to committee members' discussion, Dean Desiderio stated that the NMCI is a dynamic, continuing process. He said that rankings are available to districts so that they can validate, through examining the underlying data in the NMCI database, their respective positions in the queue. He added that the goal for the process is to update the database of every school and every other facility at least once a year. Mr. Bob Gorrell, PSFA director, stated that district personnel are being trained in accessing and updating data for their facilities.

Committee members expressed concerns about the PSCOTF recommendation to provide a \$125.0 million yearly appropriation to fund the standards-based public school capital outlay program, particularly guaranteeing that amount with senior severance tax bonds, given other demands on those funds on the part of the Legislature and the Executive. Directing the committee's attention to a spreadsheet entitled "Summary of Supplemental and Senior Severance Tax Bonding Capacity," Ms. Peacock stated that proposed language in the bill would take funding "off the top" of senior capacity in the same way that current statute requires a 10 percent setaside for water projects. She noted that the spreadsheet showed that \$24.2 million would be needed from senior capacity in order to reach the \$125.0 million guarantee for FY 05 and that the amount would increase in the outyears because economists are projecting that natural gas prices will fall back over the next few years to levels that are more nearly equal to past years. She also noted, however, that economists always under-project outyear figures since they have no way to predict the future of oil and gas prices. In response to a committee member's question about the amount of funding realized by increasing the amount of severance tax revenues that can be used to support supplemental severance tax bonds from 37.5 percent to 45 percent, Ms. Peacock said that, based on information from DFA, the projected transfer to the severance tax permanent fund was only about \$6.0 million; therefore, the amount that could be intercepted to support supplemental severance tax bonds would be about \$3.6 million. She said that, while revenue is limited in these projections, the task force is hoping that, by using the "rolling average," the good years will mitigate against having to tap into senior capacity.

In response to a committee member's question about costs associated with increasing distribution rates for SB 9 guarantees, Ms. Peacock said that she did not yet have exact figures from PED, but she estimates about \$10.0 million to increase the guarantee from \$50 per mill per unit to \$60 per mill per unit. She said that the indexing language in the proposed legislation would increase the state share by about \$1.0 million over a five-year period.

In response to committee members' questions about the implementation of the "recalcitrant district" provisions of the recommended bill, Dean Desiderio said that, once districts learn that by passing a bond or mill levy issue will allow them to leverage additional money from the state, their voters will be more likely to support those local property tax issues. He added that currently no districts in the state would fall under the "recalcitrant" category as outlined in the proposed legislation.

Committee members expressed concerns that some projects near or at the top of the queue for state-supported adequacy funding have reached this position because of poor maintenance practices in the past. Committee members discussed the importance of establishment and implementation of viable maintenance plans for all districts and discussed the fact that, since the state will henceforth be responsible for approximately 50 percent of funding to bring districts to adequacy standards, the issue of maintenance assumes an even greater importance than ever before. Mr. Gorrell stated that the PSCOC has adopted a model maintenance plan that districts may use and that PSFA field staff will be working with all districts to establish and implement their respective plans. Dean Desiderio added that districts that do not have adequate maintenance measures will not be eligible to receive state funding through the standards-based process.

Committee members questioned Dr. Michael Kaplan, Alternative Education Program Manager, PED, about requirements to qualify for federal funds for charter school facilities mentioned in the general capital outlay bill. Dr. Kaplan stated that this five-year federal program provides a

90 percent match for charter school construction or leases for the first year and then decreasing amounts over the next five years until the final year, which then includes a 10 percent match. In response to further committee members' questions, Dr. Kaplan stated that this program will provide grants for up to \$20.0 million. He said that New Mexico would be eligible if the Legislature enacts a measure to provide a match, which could be accomplished by enactment of the general capital outlay bill. He added that six states currently qualify for this funding, if it passes Congress, and that New Mexico would be the seventh.

Turning to the PSCOTF-recommended charter school legislation, committee members discussed the further limiting of the number of charter schools that can be established in a five-year period from the 100 currently allowed by law and to establishing a moratorium on charter schools while the issue is studied during the 2004 interim.

During the discussion of a moratorium on the establishment of additional charter schools, Dr. Kaplan stated that, if the Legislature were to enact such a moratorium, the state would lose a total of \$18.75 million in federal charter school planning and implementation grants over the next five years. He said that the state has already received the first year's grant of \$5.7 million and would have to return the money if the Legislature were to impose a moratorium on establishment of additional charter schools.

Committee members expressed confusion, surprise, and concern at not having heard about this grant previous to this discussion. Dr. Kaplan explained that the \$18.75 million federal planning and implementation grant is completely different from the federal charter school facilities grant for which the state is not yet qualified. Committee members questioned Dr. Kaplan about the recipients of and use for these grant dollars, and expressed concern regarding possible conflict with the state taking credit for certain Impact Aid dollars, thereby putting the state's maintenance of its equalized status in jeopardy. Dr. Kaplan stated that because this funding is a direct grant from the US Department of Education to the charter schools, it does not jeopardize the state's equalized status. After additional questions, Dr. Kaplan indicated that he would provide the committee with further information on this issue before consideration of the charter school bill by the 2004 Legislature.

Some committee members expressed concern that districts continue to be liable—or at least considered responsible—for what appears to be irresponsible fiscal practices on the part of some charter schools. In response to a committee member's question, Chairman Miera stated that the PSCOTF had considered requiring that school districts manage charter school finances but had been convinced otherwise during the task force discussion and had, instead, included language in the bill to allow—rather than require—school districts to assume financial responsibilities. Dr. Kaplan indicated that at least two charter schools in Albuquerque have negotiated with the district to handle their finances and that the arrangement seems to be working satisfactorily. Chairman Miera noted that, if a charter school is not meeting its fiduciary responsibilities satisfactorily, statute gives districts the authority to withdraw the school's charter and that, to date, no district has done so. Some committee members expressed concern that withdrawing a charter school's charter might be too draconian and suggested instead a step somewhere in between allowing the charter school to continue to malfunction fiscally and withdrawing the charter. Chairman Miera stated that he would ask staff to draft language to establish some sort of "trigger" mechanism to deal with the "in between" situations.

Committee members expressed a number of concerns about using public money to bring to standards those charter school facilities that are owned by private entities. Ms. Peacock stated that this concern has been the impetus for adding language requiring charter schools, under most circumstances, to be housed in public buildings by school year 2009-2010.

Representative Ponce requested a listing of all Deficiencies Correction Program projects.

Senator Nava requested a listing of school districts that are leasing facilities and indicated that she may wish to amend the task force-endorsed bill to include funding for those leases, as well as for charter school leases. Representative Miera requested a listing of all charter schools that are in leased facilities.

On behalf of the LESC, Chairman Miera requested information regarding charter schools that are receiving funds from the three-year, federal grant of \$18.75 million to which Dr. Kaplan referred during the discussion of federal funds available to charter schools. The chairman requested that the list include all the charter schools receiving funds, the amount of each grant, and the purposes for which the charter schools are using those funds.

Upon a motion by Representative Stewart, seconded by Representative Ponce, the LESC voted unanimously to endorse the PSCOTF-recommended general public school capital outlay bill.

After reaching consensus not to make amendments and on a motion by Representative Stewart, seconded by Representative Hamilton, the LESC voted 8-1 to endorse the charter school bill as recommended by the PSCOTF. Chairman Miera voted in the negative and explained that he would like more information on federal and other sources of funding for charter schools before voting to support the proposed charter school bill.

Upon a motion by Senator Nava, seconded by Representative Stewart, the LESC voted unanimously to endorse a memorial requesting that the LESC, in conjunction with the Secretary of Public Education, study the fiscal and programmatic impact of the establishment of charter schools on individual school districts and on the state as a whole, as well as the number and enrollment size of charter schools that should be established in individual school districts so that districts may continue to serve students in a fiscally and programmatically prudent manner and report findings and recommendations for legislation to be considered by the first session of the 47th Legislature.

DIRECTOR'S REPORT

a. Approval of LESC Financial Report for December 2003.

Upon a motion by Representative Ponce, seconded by Senator Nava, the LESC financial report for December 2003 was unanimously approved.

b. Approval of LESC Audit Report for FY 03

Pointing out that the auditor of the LESC audit for FY 03 had provided a "no exceptions" report, Dr. Rindone recognized the role of Ms. Eloise Gonzales-Okada, LESC Administrator/Office Manager, on having had no exceptions on LESC audits for 16 consecutive years. With the

consensus of the committee, Chairman Miera requested LESC staff to draft a certificate commending Ms. Gonzales-Okada for her work to be read on the House and Senate floors during the 2004 legislative session. Upon a motion by Representative Stewart, seconded by Representative Ponce, the LESC Audit Report for FY 03 was unanimously approved.

c. Correspondence

Dr. Rindone reviewed several items of correspondence included in the committee members' notebooks, adding that these items are also included in the permanent file in the LESC office.

d. Written Report: Public Employee Continuing Education, HJM 90

Dr. Rindone directed the committee's attention to a report in the committee notebooks, *Assessment of Public Employees Educational Benefits*. She explained that the report was in response to HJM 90 of 2003, which requested the Commission on Higher Education and the State Personnel Office to assess the needs and opportunities for public employees' continuing education programs and to report their findings and recommendations to the LESC prior to the 2004 legislative session.

PUBLIC SCHOOL ISSUES FOR THE 2004 LEGISLATIVE SESSION
Legislative Education Study Committee

a. Approval of Proposed Legislation

Dr. Rindone directed the committee's attention to the following list of potential legislation for the 2004 legislative session, noting that in its December 2003 meeting, the committee approved items one through 25. However, she added that some actions were deferred to the January 9, 2004 and January 19, 2004 meetings (noted in separate sections following).

Items Approved in the December 2003 LESC Meeting

EDUCATION REFORM

1. Identify and fund education reform issues as indicated in 2003 public school reform legislation, including the three-tiered licensure system, school district costs for CRTs, full-day kindergarten, the Incentives for School Improvement Fund, the Professional Development Fund, beginning teacher induction/mentorship programs, the *Family and Youth Resource Act*, teacher licensure evaluation system implementation, the Office of Education Accountability, state student identification number system, Kindergarten Plus programs, performance-based program budgeting/NCES Chart of Accounts implementation, inclusion of other instructional support staff in current T&E Index, and the *Teacher Loan for Service Act*.
2. Amend statute to require "general educational development" (GED) certificates earned by students within one year of leaving public school to be counted in the graduation rates of the last public high school attended for meeting adequate yearly progress requirements.

Sponsor: Representative Rick Miera

3. Introduce a joint memorial to the New Mexico congressional delegation expressing the Legislature's concern that imposition of the federal *No Child Left Behind Act of 2001* requirements, without provision of sufficient federal resources to carry out federal mandates included in its provisions, places an unnecessary and unreasonable hardship on the students, citizens, and government of New Mexico.

Sponsor: Representative Mimi Stewart

4. Appropriate funds for a study to identify an appropriate methodology to recognize in the Public School Funding Formula the qualifications of instructional support staff; i.e., counselors, nurses, therapists, and diagnosticians.

Sponsor: Senator Cynthia Nava

EDUCATOR QUALITY & P-20 EDUCATION INITIATIVE

5. Appropriate matching funds to expand the professional development of math and science teachers through Public Education Department (PED)-approved professional development programs.

Sponsor: Representative Mimi Stewart

6. Introduce legislation to fund a teacher cadet program to establish a middle and high school initiative to recruit and encourage students to enter the teaching profession.

Sponsor: Senator Cynthia Nava

7. Amend the substitute teacher certificate statute to provide that PED, rather than local school districts, issue substitute teacher certificates.

Sponsor: Senator Cynthia Nava

8. Amend the *State and Private Education Institutions Code* to require that, if a student's articulation complaint regarding nonacceptance of transfer module credits for graduation is upheld, the receiving institution must reimburse the student for the complete cost, including tuition, books, and fees, of each course the student is required to repeat at that institution and to require the Commission on Higher Education (CHE) to develop and undertake a plan to inform students of their rights under the act to access the complaint procedure.

Sponsor: Representative Pauline J. Ponce

9. Introduce a joint memorial to request CHE to collaborate with the public institutions of higher education to study the higher education funding formula to determine funding parity among the various schools and colleges within each institution, especially as it relates to student-generated funding between the colleges or schools of education and other colleges or schools within the university.

Sponsor: Senator Cynthia Nava

10. Introduce legislation to amend the *Loan for Service Act* to make funding available to:

- any high school student who signs an agreement declaring his intent to serve as a public school teacher in a designated shortage area in New Mexico through a career pathway program previous to enrollment in any two- or four-year teacher education program; and
- any student enrolled in a two-year institution who, previous to enrollment in any teacher education program, signs an agreement declaring his intent to serve as a public school teacher in a designated shortage area in New Mexico through a career pathway program.

Sponsor: Representative John A. Heaton

EARLY CHILDHOOD EDUCATION

11. Introduce a joint memorial to request PED, in collaboration with the Child Development Board, to study:

- the programs currently offered by licensed preschools to four-year-old children and amend and align the standards of these programs as needed to ensure that the children served will be ready for kindergarten; and

- the feasibility of establishing a state-funded, voluntary, statewide preschool program to serve four-year-old children, beginning with those children most in need based upon indicators in the at-risk index, and examine the results of the Kindergarten Plus pilot program for the possibility of statewide implementation.

Sponsors: Senator Gay G. Kernan/Representative Mimi Stewart

PUBLIC SCHOOL FUNDING

12. Amend the program cost calculation section of the *Public School Finance Act* to align numerical references related to the total program units used to determine program cost (“clean-up” language).

Sponsor: Representative Dianne Miller Hamilton

13. Amend statute, effective FY 06, to change the basis for calculating the amount of excess cash balance to be used in reducing a school district’s or charter school’s State Equalization Guarantee from the “allowable limit” to the “allowable, unrestricted, unreserved operational cash balance and the emergency reserve.”

Sponsor: Representative Rick Miera

14. Appropriate funds to conduct a “costing out” study to determine the adequacy of resources needed by public schools to ensure that New Mexico students can meet both state and federal performance standards.

Sponsor: Representative Danice Picraux

15. Add language to the *Public School Finance Act* to require that districts demonstrate support for career technical education offerings prior to PED budget approval.

Sponsor: Representative Sheryl M. Williams Stapleton

16. Appropriate funds to the New Mexico Virtual School to support continuing development of its programs and to expand it to include middle schools.

Sponsors: Senator Cynthia Nava/Representative John A. Heaton

ALIGNMENT OF THE NEW MEXICO PUBLIC SCHOOL CHART OF ACCOUNTS WITH NCES

17. Draft a letter requesting the New Mexico Secretary of Public Education to lead the efforts of appropriate stakeholders in implementing, by June 30, 2005, the National Center for Education Statistics (NCES) chart of accounts as the financial reporting mechanism for New Mexico’s public schools.

PUBLIC SCHOOL LIBRARIES

18. Introduce legislation to appropriate General Obligation Bonds for New Mexico public libraries, public school libraries, other academic libraries, and local juvenile detention facilities statewide to purchase books and other materials (requires voter approval).

Sponsor: Representative J. Paul Taylor

SCHOOL SAFETY AND SECURITY

19. Amend the fire drill statute to include—without increasing the number of required exercises—shelter-in-place drills and evacuation drills.

Sponsor: Senator William E. Sharer

20. Introduce a joint memorial requesting PED to:

- develop and disseminate a model safety policy governing after-hours work at the school site by staff members, contractors, and volunteers; and
- direct each local school district to adopt such a policy.

Sponsor: Representative Teresa A. Zanetti

21. Amend the background check statute to:

- require local school boards, regional education cooperatives, and charter schools to develop policies and procedures to require background checks of any applicant who has been offered employment, a contractor or a contractor's employee, or any other employee if the applicant, contractor, or employee has or will have unsupervised access to students at a public school;
- require an applicant for licensure renewal to submit to a fingerprint-based background check unless the applicant has done so within the previous 24 months; and
- permit local school boards, regional education cooperatives, and charter schools to have access to the records and related information obtained through a fingerprint-based background check of a contractor's employee.

Sponsor: Representative Thomas E. Swisstack

22. Amend the *Criminal Offender Employment Act* to clarify that any public employer may discharge or terminate an employee for one of the causes specified in the act.

Sponsor: Representative Thomas E. Swisstack

CONCURRENT ENROLLMENT

23. Amend statute to require a school district to transfer to a four-year institution of higher education the tuition and fees for any student who, during the term, is counted in the membership of the public school district and who will receive high school credit for coursework at a four-year institution of higher education.

Sponsors: Senator Cynthia Nava/Representative Sheryl M. Williams Stapleton

TRUANCY: KEEPING KIDS IN SCHOOL

24. Introduce a joint memorial requesting the Children, Youth and Families Department (CYFD), in collaboration with PED and the Department of Health, to study and recommend changes to the *Family in Need of Services Act* and to consider the provisions of the *Compulsory School Attendance Law* in addressing and preventing truancy.

Sponsor: Senator Mary Kay Papen

25. Amend the *Compulsory School Attendance Law* to:

- require local school boards to establish attendance and truancy policies that provide early identification of students with attendance problems and intervention measures to prevent truancy; and
- define the terms “truant” and “habitual truant.”

Sponsor: Representative Thomas E. Swisstack

Items Approved in the January 9, 2004 LESC Sub-Committee Meeting

Following her review of the December meeting actions taken by the LESC on items one through 25, Dr. Rindone explained that the following items, 26 through 35, were approved by the LESC as a subcommittee at its January 9, 2004 meeting. However, Dr. Rindone explained that the full committee needed to ratify the subcommittee’s action. The results of the full committee’s actions on these items are noted below in italics following Dr. Rindone’s description of each item.

EDUCATION REFORM

26. Amend the *Public School Code* to transfer the powers and duties of the State Board of Education and the State Superintendent of Public Instruction to PED and the Secretary of Public Education, and to define the powers and duties of the Public Education Commission.

Ms. Jonelle Maison, Bill Drafter, Legislative Council Service, explained that there was a need to amend the bill draft to clarify legislative intent regarding the proposed appeals procedure governing the suspension of local school board authority by the Public Education Department in Section 22-2-15-A, NMSA 1978. Ms. Maison presented two alternatives, A and B, for the committee’s consideration, asking that members select their preferred procedural language. Alternative A, she noted, provided that the appeal be submitted to district court, as other decisions of state agencies are appealed, while Alternative B, she continued, provided that the appeal be submitted to the Public Education Commission. On a motion by Representative Ponce, seconded by Senator Papen, the committee voted 7-2 to adopt Alternative B, with Senator Nava and Representative Stewart voting in the negative. On a motion by Senator Nava, seconded by Representative Stewart, the committee voted unanimously to allow the Secretary of Public Education, as well as the school districts, the right to appeal decisions of the Public Education Department to district court. On a motion by Representative Stewart, seconded by Representative Swisstack, the committee voted unanimously to accept Item 26, as amended to include the language of Alternative B, as adopted.

Sponsors: Senator Cynthia Nava/Representative Mimi Stewart

27. Introduce legislation to repeal Chapter 143, Laws 2003 (SB 911), which repealed certain articles of the *Public School Code* and provided for the transition to PED upon adoption of Constitutional Amendment 1 of 2003.

Sponsor: Representative Rick Miera

28. Appropriate funds in FY 05 for year one of a four-year phase-in for a professional licensure and pay plan (including benefits) for educational assistants (EAs) in the Public School Funding Formula to enable New Mexico to meet the requirement of the federal *No Child Left Behind Act of 2001* that EAs who serve in Title I funded programs become certified as paraprofessionals by earning an associate of arts degree, completing a minimum of 48 postsecondary education units, or passing an approved competency exam.

On a motion by Senator Nava, seconded by Senator Papen, the committee voted unanimously to approve the concept noted above, and the Chair requested LESC staff and Ms. Maison to draft legislation for introduction during the session.

Sponsors: Representative Rick Miera/Senator Mary Kay Papen

29. Amend statute to eliminate the individual writing assessment in grades 4, 6, and 8 and require districts to apply writing assessment parameters to the extended response portion of the new criterion-referenced tests.

Sponsors: Senators Cynthia Nava and Gay G. Kernan

INSTRUCTIONAL MATERIAL

30. Introduce a joint memorial to request PED to study the feasibility of using software programs to offer virtual instruction in dissection projects for the study of anatomy and physiology in middle and high school science courses in New Mexico.

Sponsors: Representative Mimi Stewart/Senator Mary Kay Papen

PUBLIC SCHOOL TRANSPORTATION

31. Amend the *Public School Finance Act* to require, by school year 2007-2008, that a total of 25 percent of all buses in a school district be air conditioned, including air conditioning for all buses with wheelchair lifts, and to provide a waiver for districts that can demonstrate climatic conditions that do not necessitate air conditioning on school buses.

Sponsor: Representative Mimi Stewart

SCHOOL SAFETY AND SECURITY

32. Appropriate funds to PED to provide training and technical assistance for school districts to implement bullying prevention programs, require each local public school district to adopt a bullying prevention policy by August 2005, and require each public school to implement a bullying prevention program by August 2007.

Sponsors: Senator Mary Jane M. Garcia/Representative J. Paul Taylor

The committee agreed to ratify the subcommittee actions taken on January 9, 2004 on items 27, 29, 30, 31, and 32.

Items Approved in the January 19, 2004 LESC Meeting

Dr. Rindone directed the committee's attention to the following other issues that had been deferred to January 19 for the committee's consideration

PUBLIC SCHOOL SUPPORT RECOMMENDATIONS FOR FY05

Dr. Rindone stated that, at its January 9, 2004 meeting, the LESC agreed to consider two additional recommendations:

- A \$500,000 supplemental request to assist school districts in paying for criterion-referenced tests in FY 04; and
- \$8.2 million to implement the first phase of a career ladder for educational assistants beginning in FY 05.

Dr. Rindone explained that, while both appropriations are included in the LESC public school support recommendations, supplemental requests do not require a sponsor. She added that the legislation for a career ladder for educational assistants had previously been approved and that the \$8.2 million appropriation would fund the first year implementation.

Upon a motion by Representative Stewart, seconded by Representative Swisstack, the committee voted unanimously to approve the two additional recommendations to the LESC public school support recommendations for FY 05.

CAPITAL OUTLAY

33. Recommendations of the Public School Capital Outlay Task Force (PSCOTF) include the following amendments to statute:

- amend the *Severance Tax Bonding Act* to provide a permanent revenue stream to fund, among others, projects to meet statewide adequacy standards, including projected enrollment growth, and use senior severance tax bonds to guarantee the annual funding amount by basing the amount in senior severance tax bonds on a rolling three-year average of past and current levels of supplemental bonds;
- increase the amount of severance tax revenues that can be used to support supplemental severance tax bonds from 37.5 percent to 45 percent to provide some additional capacity, especially in years when revenues are rising because of high oil and natural gas prices;
- complete funding of the deficiencies corrections program with part of the FY 04 funds diverted from the Severance Tax Permanent Fund and the remainder from the General Fund Operating Reserve;

- amend the *Public School Capital Outlay Act* to:
 - provide a distribution from FY 05 through FY 10 from the Public School Capital Outlay Fund to charter schools to make lease payments with the intent that these funds also be used to match federal funds provided as part of the *No Child Left Behind Act of 2001*;
 - establish other PSCOTF spending priorities and require that, for the allocation cycle beginning September 1, 2003, grant awards will be based on the adequacy standards and all school districts will be eligible to apply;
 - increase membership on the Public School Capital Outlay Council (PSCOC) from nine to ten;
 - fund PSCOC projects partially funded under the former “critical capital outlay” system to ensure completion within a three-year period;
 - authorize the PSCOC to make grants outside of the normal process when an emergency threatens the health and safety of students or school personnel; and
 - provide a cause of action against specific types of school districts for specified constitutional violations and provide for a tax imposition as a remedy.
- amend the *Public School Capital Improvements Act* (also called SB 9 or the two-mill levy) to:
 - include expenditures for technical training and certification for maintenance and facilities management personnel among purposes for expenditure of SB 9 funds;
 - require that maintenance projects be the priority for expenditure of SB 9 funds; and
 - increase the state guarantee amount from \$50 per mill per unit to \$60 per mill per unit beginning in FY 05 and thereafter index both the guarantee amount and the minimum state contribution of \$5 per mill per unit to inflation;
- amend the *Property Control Act* to allow the Public School Facilities Authority to purchase and own portable classrooms;
- amend the *Technology for Education Act* to limit the period of offsets against a school district’s Education Technology Fund distributions to three years;
- include language in statute to encourage the use of mediation at the district level to resolve disputes relating to facilities and placement within the five-year plan; and
- authorize the PSCOTF to continue its work until July 1, 2005, to oversee the implementation of the new process and evaluate the adequacy of the funding source.

Upon a motion by Representative Stewart, seconded by Representative Ponce, the LESC voted unanimously to endorse the PSCOTF–recommended general public school capital outlay bill.

Sponsors: Representative Rick Miera/Senator Cynthia Nava

CHARTER SCHOOLS

34. Merging draft bills endorsed by the task force and a bill endorsed by the LESC during the 2003 session, recommendations of the PSCOTF regarding charter schools include amending the *1999 Charter Schools Act* to:

- provide for a mediation process as a way to resolve disputes between charter schools and their respective school districts, as well as disputes related to the approval of a charter;
- for charter schools newly established or charter schools with charters being renewed after July 1, 2004, prohibit members of a governing board of one charter school from serving on the governing board of another charter school;
- allow the Secretary of Public Education to authorize a single charter school to maintain separate facilities at two or more locations within the same district while requiring that the school be considered a single school for the purposes of size adjustment factors;
- clarify charter school access to school district property and capital funding;
- require that, after July 1, 2004, a new charter school cannot begin operating until the PSFA certifies that its facility meets life and health safety codes related to educational occupancy;
- require all charter school facilities to meet statewide adequacy standards within the same time frame as other public schools are being brought up to standards; and
- require that after January 1, 2009, all charter schools applying for renewal of their respective charters be housed in public buildings, with exceptions provided under certain conditions.

After reaching consensus not to make amendments and on a motion by Representative Stewart, seconded by Representative Hamilton, the LESC voted 8-1, with Representative Miera voting in the negative, to endorse the charter school bill as recommended.

Sponsor: Representative Roberto “Bobby” J. Gonzales

INSTRUCTIONAL MATERIAL

35. Amend the *Instructional Material Law* to change the basis for determining the instructional material allocation from the 40th day of the current school year to the prior year 40-80-120-day averaged membership, direct PED to make direct payments to book depositories and/or publishers on behalf of each private school up to the amount of the private school’s fiscal-year allocation, allow PED to assume a 75 percent cash balance credit in determining the allocation to each eligible entity, allocate 95 percent of the appropriation by April 15, allow entities receiving the funds to use 100 percent for materials not on the multiple list, and maintain the current adoption cycle to ensure the lowest available prices for materials.

In reviewing the proposed bill, the committee made changes to Section 4, Distribution of Funds for Instructional Material, to require that only unencumbered funds remaining at the end of a fiscal year be used as a credit in determining the allocation for instructional material for the following school year; and to Section 6, Annual Report, to require all eligible entities, rather than just a school, to provide to PED an itemized list of instructional material purchased. On a motion by Representative Stewart, seconded by Senator Papen, the LESC voted 8-1, with Representative Ponce voting in the negative, to endorse the instructional material bill as amended.

Sponsors : Senator Cynthia Nava/Representative Mimi Stewart

b. Approval of Sponsors for Endorsed Legislation

After reviewing the list of LESC-endorsed legislation, the committee approved by consensus the sponsors for each bill.

c. Copies of Legislation Endorsed at the December 2003 LESC Meeting

Copies of endorsed legislation were handed out to the LESC members and others present at the LESC meeting.

Representative Miera thanked the presenters and, with the consensus of the committee, adjourned the LESC meeting at 1:40 p.m.

_____ Chairperson

_____ Date